

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIRILO SILVA,

Plaintiff,

V.

FIRST COMMUNITY INSURANCE
COMPANY,

Defendant.

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CIVIL ACTION NO. _____

DEFENDANT FIRST COMMUNITY INSURANCE COMPANY'S
NOTICE OF REMOVAL

Defendant First Community Insurance Company ("Defendant") files this Notice of Removal and respectfully shows the following:

I.
BACKGROUND

1.1 On August 21, 2019, Plaintiff Cirilo Silva ("Plaintiff") filed this lawsuit in Harris County, Texas, against Defendant.

1.2 Plaintiff served Defendant with a copy of the Petition on or about December 2, 2019.

1.3 Defendant timely filed its original answer on December 20, 2019.

1.4 Defendant files this notice of removal within 30 days of receiving Plaintiff's initial pleading. *See* 28 U.S.C. § 1446(b). In addition, this Notice of Removal is being filed within one year of the commencement of this action. *See id.*

1.5 As required by Local Rule 81 and 28 U.S.C. § 1446(a), simultaneously with the filing of this Notice of Removal, attached hereto as ***Exhibit A*** is the Index of Matters Being Filed, ***Exhibit B*** is the state court's Docket Sheet, ***Exhibit C*** is *Plaintiff's Original Petition*,

Request for Disclosures, Request for Production, Interrogatories, Request for Admissions and Jury Demand; Exhibit D is a copy of the Citation; *Exhibit E* is the Return of Service Receipt; and *Exhibit F* is Defendant First Community Insurance Company's Original Answer and Affirmative Defenses. Additionally, a *List of Parties and Counsel* is attached as *Exhibit G*. A copy of this Notice is also being filed with the state court and served upon the Plaintiff.

1.6 Venue is proper in this Court under 28 U.S.C. § 1441(a) because this district and division embrace Harris County, Texas, the place where the removed action has been pending.

II. BASIS FOR REMOVAL

2.1 Removal is proper based on diversity of citizenship under 28 U.S.C. §§ 1332(a), 1441(a) and 1446. This is a civil action between citizens of different states, and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

A. The Proper Parties Are Of Diverse Citizenship

2.2 Plaintiff is and was at the time the lawsuit was filed, a resident and citizen of Texas. *See* Pl.'s Orig. Pet. at ¶ 4.

2.3 Both at the time the lawsuit was originally filed, and at the time of removal, Defendant was a corporation incorporated in the State of Florida with its principal place of business in Saint Petersburg, Florida. Accordingly, Defendant is a citizen of the State of Florida.

2.4 Because Plaintiff is a citizen of Texas and Defendant is not a citizen of Texas, complete diversity of citizenship exists among the parties.

B. The Amount in Controversy Exceeds \$75,000.00

2.5 This is a civil action in which the amount in controversy exceeds the jurisdictional limits of \$75,000.00. In determining the amount in controversy, the Court may consider, "penalties, statutory damages, and punitive damages." *St Paul Reinsurance Co, Ltd v Greenberg*,

134 F.3d 1250, 1253 (5th Cir. 1998); *see Ray v State Farm Lloyds*, No. 3:98-CV-1288-G, 1999 WL 151667, at *2-3 (N.D. Tex. 1999) (finding sufficient amount in controversy in plaintiff's case against the insurer for breach of contract, bad faith, violations of the Texas Insurance Code and Texas Deceptive Trade Practices Act and mental anguish).

2.6 Plaintiff alleges that Defendant breached its contract with Plaintiff and violated Chapters 541 and 542 of the Texas Insurance Code. *See* Pl.'s Orig. Pet. at ¶¶ 18-25. She seeks to recover actual damages, statutory penalties, exemplary damages, treble damages, pre- and post-judgment interest, and attorneys' fees and costs. *Id.* at ¶ 32. Additionally, *Plaintiff's Original Petition* alleges that "Plaintiff seeks monetary relief under \$100,000.00". *Id.* at ¶ 2. In an improper attempt to circumvent federal diversity jurisdiction, the Petition claims that Plaintiff seeks a maximum amount of \$74,000. *Id.* However, no binding stipulation was provided. *See id.* Therefore, the total amount in controversy exceeds \$75,000. *See, e.g., Martinez v. Liberty Ins. Corp.*, No. CV H-19-3956, 2019 WL 6894497, at *3 (S.D. Tex. Dec. 18, 2019) (denying a motion to remand brought by the same counsel in this case based on the same amount in controversy allegations as this case).

III. CONCLUSION AND PRAYER

3.1 Accordingly, all requirements are met for removal under 28 U.S.C. §§ 1332 and 1441. Defendant hereby removes this case to this Court for trial and determination.

Respectfully submitted,

/s/ Christopher H. Avery

Christopher H. Avery, *Attorney-In-Charge*

State Bar No. 24069321

Southern District No. 1048590

cavery@thompsoncoe.com

THOMPSON, COE, COUSINS & IRONS, L. L. P.

One Riverway, Suite 1400
Houston, Texas 77056
Telephone: (713) 403-8210
Fax: (713) 403-8299

And

Matthew J. Kolodoski
State Bar No. 24081963
Southern District No. 3137695
mkolodoski@thompsoncoe.com

THOMPSON, COE, COUSINS & IRONS, L. L. P.
700 North Pearl Street, 25th Floor
Dallas, Texas 75201
Telephone: (214) 871-8200
Fax: (214) 871-8209

**ATTORNEYS FOR FIRST COMMUNITY
INSURANCE COMPANY**

CERTIFICATE OF SERVICE

This is to certify that on January 2, 2020, a true and correct copy of the foregoing was delivered to the following counsel of record in accordance with the Federal Rules of Civil Procedure:

Anthony G. Buzbee
Christopher J. Leavitt
THE BUZBEE LAW FIRM
JPMorgan Chase Tower 600
Travis Street, Suite 7300
Houston, Texas 77002
tbuzbee@txattorneys.com
cleavitt@txattorneys.com

AND

Stephen R. Walker
Gregory J. Finney
Juan A. Solis
LAW OFFICES OF MANUEL SOLIS, PC
6657 Navigation Blvd.
Houston, TX 77011
swalker@manuelsolis.com
gfinney@manuelsolis.com
jusolis@manuelsolis.com
Counsel for Plaintiff Cirilo Silva

/s/ Matthew J. Kolodoski
Matthew J. Kolodoski